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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/500,716

07/06/2004

Alexander David Scott Ellin

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EXAMINER

HEINRICH, SAMUEL M

ART UNIT

PAPER NUMBER

3742

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: ALEXANDER DAVID SCOTT ELLIN & JAMES REYNOLDS
HENSHAW

Application No. 10/500,716
Technology Center 3700

Mailed: November 12, 2009

Before DEBORAH L. PERRY, *Supervisory Paralegal Specialist, Review Team.*

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on October 13, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter requiring attention prior to docketing.

PRIOR ORDER FOR RETURN

A prior “Order Returning Undocketed Appeal to Examiner” was mailed on May 19, 2009, wherein the Examiner was instructed that corrections were required. A review of the file finds that the required corrections have not been made or have not been made in entirety. The matters still requiring attention prior to docketing are identified below.

EXAMINER’S ANSWER, EVIDENCE RELIED UPON

Section §1207.02 of the *Manual of Patent Examining Procedure* (MPEP) (Eighth Edition, Rev. 6, September 2007) states:

(A) CONTENT REQUIREMENTS FOR EXAMINER’S ANSWER. The examiner’s answer is required to include, under appropriate headings, in the order indicated, the following items:

. . . .

- (8) Evidence Relied Upon. A listing of the evidence relied on (e.g., patents, publications, admitted prior art), and in the case of nonpatent references, the relevant page or pages.

The Examiner’s Answer mailed November 21, 2008, is deficient because the “Evidence Relied Upon” section fails to include the reference(s) Gallagher (U.S. Pub. 2003/0015672A1) cited on page 5 in the Examiner’s Answer’s grounds of rejection of claim 15-17 under 35 USC § 103(a).

Furthermore, the Answer fails to include the reference Neiheisel (U.S. Patent 5,736,709) cited on page 5 in the Examiner's Answer's Grounds of Rejection of claim 18 & 36 under 35 USC § 103(a).

Appropriate correction is required.

EXAMINER'S CONSIDERATION OF REPLY BRIEF

A Reply Brief was filed in this application on January 8, 2009. There is no evidence on the record indicating that the Examiner has considered the Reply Brief in accordance with 37 CFR § 41.43(a)(1) and MPEP § 1208, part II.

CONCLUSION

Accordingly, it is ORDERED that the application is returned to the Examiner:

- 1) to issue a PTO-90 citing the missing references listed under the Evidence Relied Upon section, paragraph (8); and
- 2) consider the Reply Brief filed January 8, 2009, as indicated above; and
- 3) for such further action as may be appropriate.

Application No. 10/500,716

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

DLP/jsd

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